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9 **IN THE SUPREME COURT**  
10 **STATE OF ARIZONA**  
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PETITION TO AMEND ER 8.4,  
RULE 42, ARIZONA RULES OF  
THE SUPREME COURT

Supreme Court No. R- \_\_\_\_\_

**Petition to Amend ER 8.4, Rule 42,  
Arizona Rules of the Supreme Court**

14 The State Bar of Arizona hereby petitions the Court, pursuant to Rule 28,  
15 Ariz. R. Sup. Ct., to amend Ethical Rule 8.4, within Rule 42, Ariz. R. Sup. Ct., to  
16 provide explicitly in the text of the Ethical Rule what already is provided implicitly  
17 within the Rule, as explained in the Comment ¶ 3 thereto; namely, that a lawyer's  
18 manifestation of bias or prejudice against certain classifications of people who  
19 historically have faced discrimination is prejudicial to the administration of justice,  
20 and to add the classification of "gender identity or expression" to the list of  
21 classifications enumerated.

22 The specific language of the proposed amendment is set forth in Appendix  
23 "A" attached hereto.

24 This amendment makes it clear that a lawyer who, in the course of his or her  
25 legal practice, knowingly manifests, by words or conduct, bias or prejudice based  
26 upon race, gender, religion, national origin, disability, age, sexual orientation,

1 gender identity or expression, or socioeconomic status, violates the Ethical Rule  
2 because such actions are prejudicial to the administration of justice, with the sole  
3 exception that biased or prejudicial comments may be asserted in the form of  
4 legitimate advocacy when race, gender, religion, national origin, disability, age,  
5 sexual orientation, gender identity or expression, or socioeconomic status are issues  
6 in a legal proceeding.

7 The ethical obligation proposed by this amendment already is embedded in  
8 multiple rules regulating the conduct of Arizona lawyers and judicial officers. For  
9 example, the Arizona Code of Judicial Conduct, in pertinent part, provides:

10 Canon 3(B)(5) (“A judge shall not, in the performance of judicial  
11 duties, by words or conduct manifest bias or prejudice, including  
12 but not limited to bias or prejudice based upon race, sex, religion,  
13 national origin, disability, age, sexual orientation or  
14 socioeconomic status, and shall not permit staff, court officials  
and others subject to the judge’s direction and control to do so.”);

15 Canon 3(B)(6) (“A judge shall require lawyers in proceedings  
16 before the judge to refrain from manifesting, by words or conduct,  
17 bias or prejudice based upon race, sex, religion, national origin,  
18 disability, age, sexual orientation or socioeconomic status, against  
19 parties, witnesses, counsel or others. This § 3B(6) does not  
20 preclude legitimate advocacy when race, sex, religion, national  
origin, disability, age, sexual orientation or socioeconomic status,  
or other similar factors, are issues in the proceeding.”);

21 Canon 4(A) (“A judge shall conduct all of the judge’s extra-  
22 judicial activities so that they do not:

23 (1) cast reasonable doubt on the judge’s capacity to act impartially  
as a judge”);

24 *see also*, Canon 4, Commentary (“Expressions of bias or prejudice  
25 by a judge, even outside the judge’s judicial activities, may cast  
26 reasonable doubt on the judge’s capacity to act impartially as a  
judge. Expressions which may do so include jokes or other

1 remarks demeaning individuals on the basis of their race, sex,  
2 religion, national origin, disability, age, sexual orientation or  
socioeconomic status.”).

3 Likewise, the Rules of Practice of the United States District Court for the District of  
4 Arizona, in pertinent part, provide:

5 The duty to be respectful of others includes the responsibility to  
6 avoid comment or behavior that can reasonably be interpreted as  
7 manifesting prejudice or bias toward another on the basis of  
8 categories such as gender, race, ethnicity, religion, disability, age,  
or sexual orientation.

9 Local Rule 83.5. Similarly, the Local Rules for the United States Bankruptcy Court  
10 of the District of Arizona provide:

11 The duty to be respectful of others includes the responsibility to  
12 avoid comment or behavior that can reasonably be interpreted as  
13 manifesting prejudice or bias toward another on the basis of  
14 categories such as gender, race, ethnicity, religion, disability, age,  
or sexual orientation.

15 Rule 1000-1.

16 The ethical obligation proposed by this amendment is consistent with the  
17 American Bar Association’s Model Rules of Professional Conduct, Model Rule 8.4,  
18 Comment ¶ 3 (providing that it is misconduct prejudicial to the administration of  
19 justice for an attorney to “knowingly manifest[] by words or conduct, bias or  
20 prejudice based upon race, sex, religion, national origin, disability, age, sexual  
21 orientation or socioeconomic status.”). Moreover, it is consistent with the ethical  
22 rules of many other states. Attached as Appendix “C” is a representative overview  
23 of many of those states’ ethical rules, including rules adopted by California,  
24 Colorado, Connecticut, Delaware, the District of Columbia, Florida, Idaho, Illinois,  
25 Indiana, Iowa, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New  
26

1 York, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Utah,  
2 Vermont and Washington.

3 As other states have emphasized, anti-discrimination protections “reflect[] the  
4 premise that a commitment to equal justice under the law lies at the very heart of the  
5 legal system.” See Maryland Lawyers’ Rules of Professional Conduct, Rule 8.4(e),  
6 Comment ¶ 4.

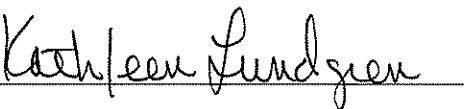
7 It is important to elevate this provision prohibiting bias or prejudice from  
8 comment to rule status to ensure that all Arizona attorneys are aware of it and to  
9 emphasize its centrality to our system of equal justice under the law.

10 For the reasons set forth above, the State Bar of Arizona respectfully petitions  
11 this Court to amend Ethical Rule 8.4, under Rule 42 of the Arizona Rules of the  
12 Supreme Court, as set forth in Appendix “A” attached hereto. In order to reflect the  
13 relocation of portions of Comment ¶ 3, Comment ¶ 3 should be revised as set forth  
14 in Appendix “B” attached hereto.

15 **RESPECTFULLY SUBMITTED** this 15<sup>th</sup> day of June, 2010.

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19 John A. Furlong  
General Counsel

20 Electronic copy filed with the  
21 Clerk of the Supreme Court of  
22 Arizona this 15<sup>th</sup> day of June, 2010.

23 By:   
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1  
2 APPENDIX "A"

3 ARIZONA RULES OF THE SUPREME COURT

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5 Rule 42, ER 8.4. Misconduct

6 It is professional misconduct for a lawyer to:

7 (a) violate or attempt to violate the Rules of  
8 Professional Conduct, knowingly assist or induce  
9 another to do so, or do so through the acts of  
10 another;  
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12 (b) commit a criminal act that reflects  
13 adversely on the lawyer's honesty, trustworthiness or  
14 fitness as a lawyer in other respects;  
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16 (c) engage in conduct involving dishonesty,  
17 fraud, deceit or misrepresentation;  
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19 (d) engage in conduct that is prejudicial to the  
20 administration of justice;

21 (e) knowingly manifest bias or prejudice based  
22 upon race, gender, religion, national origin,  
23 disability, age, sexual orientation, gender identity  
24 or expression, or socioeconomic status in the course  
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1 of representing a client when such actions are  
2 prejudicial to the administration of justice;  
3 provided, however, this does not preclude legitimate  
4 advocacy when such classification is an issue in the  
5 proceeding;

7       (f) state or imply an ability to influence  
8 improperly a government agency or official or to  
9 achieve results by means that violate the Rules of  
10 Professional Conduct or other law; or

12       (g) knowingly assist a judge or judicial officer  
13 in conduct that is a violation of applicable Code of  
14 Judicial Conduct or other law.;

16       (h) file a notice of change of judge under Rule  
17 10.2, Arizona Rules of Criminal Procedure, for an  
18 improper purpose, such as obtaining a trial delay or  
19 other circumstances enumerated in Rule 10.2(b) .  
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1 APPENDIX "B"

2 ARIZONA RULES OF THE SUPREME COURT

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6 Comment [Effective Dec. 1, 2003]

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9 [1] Lawyers are subject to discipline when they  
10 violate or attempt to violate the Rules of  
11 Professional Conduct, knowingly assist or induce  
12 another to do so or do so through the acts of  
13 another, as when they request or instruct an agent to  
14 do so on the lawyer's behalf. Paragraph (a), however,  
15 does not prohibit a lawyer from advising a client of  
16 action the client is lawfully entitled to take.  
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19 [2] Many kinds of illegal conduct reflect  
20 adversely on fitness to practice law, such as  
21 offenses involving fraud and the offense of willful  
22 failure to file an income tax return. However, some  
23 kinds of offenses carry no such implication.  
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1 Traditionally, the distinction was drawn in terms of  
2 offenses involving "moral turpitude." That concept  
3 can be construed to include offenses concerning some  
4 matters of personal morality, such as adultery and  
5 comparable offenses that have no specific connection  
6 to fitness for the practice of law. Although a lawyer  
7 is personally answerable to the entire criminal law,  
8 a lawyer should be professionally answerable only for  
9 offenses that indicate lack of those characteristics  
10 relevant to law practice. Offenses involving  
11 violence, dishonesty, or breach of trust, or serious  
12 interference with the administration of justice are  
13 in that category. A pattern of repeated offenses,  
14 even ones of minor significance when considered  
15 separately, can indicate indifference to legal  
16 obligation.

21  
22 ~~[3] A lawyer who in the course of representing a~~  
23 ~~client, knowingly manifests by words or conduct, bias~~  
24 ~~or prejudice based upon race, sex, religion, national~~  
25 ~~origin, disability, age, sexual orientation, gender~~  
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1 ~~identity or socioeconomic status, violates paragraph~~  
2 ~~(d) when such actions are prejudicial to the~~  
3 ~~administration of justice. This does not preclude~~  
4 ~~legitimate advocacy when race, sex, religion,~~  
5 ~~national origin, disability, age, sexual orientation,~~  
6 ~~gender identity or socioeconomic status, or other~~  
7 ~~similar factors, are issues in the proceeding. A~~  
8  
9 trial judge's finding that peremptory challenges were  
10 exercised on a discriminatory basis does not alone  
11 establish a violation of this Rule.  
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14 [4] A lawyer may refuse to comply with an  
15 obligation imposed by law upon a good faith belief  
16 that no valid obligation exists. The provisions of ER  
17 1.2(d) concerning a good faith challenge to the  
18 validity, scope, meaning or application of the law  
19 apply to challenges of legal regulation of the  
20 practice of law.  
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22  
23 [5] Lawyers holding public office assume legal  
24 responsibilities going beyond those of other  
25 citizens. A lawyer's abuse of public office can  
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1 suggest an inability to fulfill the professional role  
2 of lawyers. The same is true of abuse of positions of  
3 private trust such as trustee, executor,  
4 administrator, guardian, agent and officer, director  
5 or manager of a corporation or other organization.  
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## APPENDIX "C"

### Arizona

- Adopted a version of Model Rule 8.4, Comment ¶ 3 providing that "[a] lawyer who in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity or socioeconomic status, violates paragraph (d) [of Arizona Ethical Rule 8.4] when such actions are prejudicial to the administration of justice. This does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, gender identity or socioeconomic status, or other similar factors, are issues in the proceeding. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule."
- Codified as Arizona Ethical Rules, Rule 8.4, Comment ¶ 3
- See <http://www.myazbar.org/Ethics/ruleview.cfm?id=61>

### California

- Adopted a rule governing "Prohibited Discriminatory Conduct in a Law Practice," which provides, in part, that "[i]n the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability . . ."
- Codified as California Rules of Professional Conduct, Rule 2-400(B)
- See [http://www.calbar.ca.gov/calbar/pdfs/rules/Rules\\_Professional-Conduct.pdf](http://www.calbar.ca.gov/calbar/pdfs/rules/Rules_Professional-Conduct.pdf)

### Colorado

- Adopted a rule providing that it is misconduct for a lawyer to "engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other

- 1 counsel, court personnel, witnesses, parties,  
judges, judicial officers, or any persons  
involved in the legal process."
- 2 • Codified as Colorado Rules of Professional  
Conduct, Rule 8.4(g)
- 3 • Comment ¶ 3 to Colorado's Rule 8.4 further  
4 provides that "[a] lawyer who, in the course of  
representing a client, knowingly manifests by  
5 word or conduct, bias or prejudice based upon  
6 race, gender, religion, national origin,  
disability, age, sexual orientation or  
7 socioeconomic status, violates paragraph (g) and  
also may violate paragraph (d)." Paragraph (d)  
8 is identical to Model Rule 8.4(d), which provides  
that it is misconduct to "engage in conduct that  
is prejudicial to the administration of justice."
- See  
9 [http://www.cobar.org/index.cfm/ID/20519/subID/22571/C](http://www.cobar.org/index.cfm/ID/20519/subID/22571/CETH//)  
10 [ETH//](http://www.cobar.org/index.cfm/ID/20519/subID/22571/CETH//)

#### 11 **Connecticut**

- 12 • Adopted a version of Model Rule 8.4, Comment ¶ 3  
13 providing that "[a] lawyer who, in the course of  
representing a client, knowingly manifests by  
14 words or conduct, bias or prejudice based upon  
race, sex, religion, national origin, disability,  
15 age, sexual orientation or socioeconomic status,  
violates" the rule "when such actions are  
prejudicial to the administration of justice."
- 16 • Codified as Connecticut Rules of Professional  
Conduct, Rule 8.4(4), Commentary
- 17 • See  
[http://www.jud.ct.gov/Publications/PracticeBook/P](http://www.jud.ct.gov/Publications/PracticeBook/PB1.pdf)  
18 [B1.pdf](http://www.jud.ct.gov/Publications/PracticeBook/PB1.pdf)

#### 19 **Delaware**

- 20 • Adopted Model Rule 8.4, Comment ¶ 3 providing, "A  
21 lawyer who, in the course of representing a  
client, knowingly manifests by words or conduct,  
22 bias or prejudice based upon race, sex, religion,  
national origin, disability, age, sexual  
orientation or socioeconomic status, violates  
paragraph (d) when such actions are prejudicial  
to the administration of justice."
- 23 • Codified as Delaware Lawyers' Rules of  
Professional Conduct, Rule 8.4(d), Comment ¶ 3
- 24 • See  
25 [http://courts.delaware.gov/odc/DLRPCwithCommentsD](http://courts.delaware.gov/odc/DLRPCwithCommentsDec2008.pdf)  
[ec2008.pdf](http://courts.delaware.gov/odc/DLRPCwithCommentsDec2008.pdf)

#### 26 **District of Columbia**

- Adopted a version of Model Rule 8.4, Comment ¶ 3 that provides a lawyer violates the rule against engaging "in conduct that seriously interferes with the administration of justice" when that lawyer uses "words or actions that manifest bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status."
- Codified as District of Columbia Rules of Professional Conduct, Rule 8.4(d), Comment ¶ 3
- See [http://www.dcbar.org/new\\_rules/rules.cfm](http://www.dcbar.org/new_rules/rules.cfm)

#### **Florida**

- Adopted a rule providing that a lawyer shall not "engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic."
- Codified as Florida Rules of Professional Conduct, Rule 4-8.4(d)
- See <http://www.floridabar.org/divexe/rrtfb.nsf/FV/0B6C8E5CDCA464D685257172004B0FBD>

#### **Idaho**

- Adopted Model Rule 8.4, Comment ¶ 3 providing that "[a] lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice."
- Codified as Idaho Rules of Professional Conduct, Rule 8.4(d), Comment ¶ 3
- See <http://www2.state.id.us/ISB/rules/irpc.htm>

#### **Illinois**

- Adopted a rule providing that a lawyer shall not engage in conduct that is prejudicial to the administration of justice and "[i]n relation thereto, a lawyer shall not engage in adverse discriminatory treatment of litigants, jurors, witnesses, lawyers, and others, based on race,

sex, religion, or national origin, disability, age, sexual orientation or socioeconomic status. This subsection does not preclude legitimate advocacy when these or similar factors are issues in the proceeding."

- Codified as Illinois Rules of Professional Conduct, Rule 8.4(a)(5)
- Adopted an additional rule providing that a lawyer shall not "violate a Federal, State or local statute or ordinances that prohibits [sic] discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer's fitness as a lawyer."
- Codified as Illinois Rules of Professional Conduct, Rule 8.4(a)(9)(A)
- See [http://www.state.il.us/court/SupremeCourt/Rules/Art\\_VIII/ArtVIII.htm#8.4](http://www.state.il.us/court/SupremeCourt/Rules/Art_VIII/ArtVIII.htm#8.4)

#### **Indiana**

- Adopted a rule providing that it is misconduct for a lawyer to "engage in conduct, in a professional capacity, manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors."
- Codified as Indiana Rules of Court, Rules of Professional Conduct, Rule 8.4(g)
- See [http://www.in.gov/judiciary/rules/prof\\_conduct/](http://www.in.gov/judiciary/rules/prof_conduct/)

#### **Iowa**

- Adopted Model Rule 8.4, Comment ¶ 3 providing that a "lawyer who, in the course of representing a client, knowingly manifests, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice."
- Codified as Iowa Rules of Professional Conduct, Rule 32:8.4, Comment ¶ 3
- Adopted an additional rule that it is professional misconduct for a lawyer to "engage in . . . other unlawful discrimination . . ."
- Codified as Iowa Rules of Professional Conduct, Rule 32:8.4(g)

- See  
<http://www.judicial.state.ia.us/wfdata/frame2395-1066/File1.pdf>

### **Maryland**

- Adopted a rule providing that it is professional misconduct for a lawyer to "knowingly manifest by words or conduct when acting in a professional capacity bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status when such action is prejudicial to the administration of justice, provided, however, that legitimate advocacy is not a violation of this paragraph."
- Codified as Maryland Lawyers' Rules of Professional Conduct, Rule 8.4(e)
- Maryland also adopted a related comment that provides, "Paragraph (e) reflects the premise that a commitment to equal justice under the law lies at the very heart of the legal system. As a result, even when not otherwise unlawful, a lawyer who, while acting in a professional capacity, engages in the conduct described in paragraph (e) and by so doing prejudices the administration of justice commits a particularly egregious type of discrimination. Such conduct manifests a lack of character required of members of the legal profession. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. A judge, however, must require lawyers to refrain from the conduct described in paragraph (e). See Md. Rule 16-813, Maryland Code of Judicial Conduct, Canon 3 B (11)."
- Codified as Maryland Lawyers' Rules of Professional Conduct, Rule 8.4(e), Comment ¶ 4
- See  
<http://www.courts.state.md.us/rules/rodocs/153ro.pdf>

### **Massachusetts**

- Adopted a rule providing that a lawyer shall not "in appearing in a professional capacity before a tribunal, engage in conduct manifesting bias or prejudice based on race, sex, religion, national origin, disability, age, or sexual orientation against a party, witness, counsel, or other person. This paragraph does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, or sexual orientation, or another similar factor is an issue in the proceeding."

- Codified as Massachusetts Rules of Professional Conduct, Rule 3.4(i)
- See <http://www.mass.gov/obcbbo/RPC.pdf>

### **Minnesota**

- Adopted a rule providing that it is professional misconduct for a lawyer to "harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status in connection with a lawyer's professional activities."
- Codified as Minnesota Rules of Professional Conduct, Rule 8.4(g)
- Adopted an additional rule providing that it is professional misconduct for a lawyer to "commit a discriminatory act prohibited by federal, state, or local statute or ordinance that reflects adversely on the lawyer's fitness as a lawyer."
- Codified as Minnesota Rules of Professional Conduct, Rule 8.4(h)
- Also adopted a comment providing, "Paragraph (h) reflects the premise that the concept of human equality lies at the very heart of our legal system. A lawyer whose behavior demonstrates hostility toward or indifference to the policy of equal justice under the law may thereby manifest a lack of character required of members of the legal profession. Therefore, a lawyer's discriminatory act prohibited by statute or ordinance may reflect adversely on his or her fitness as a lawyer even if the unlawful discriminatory act was not committed in connection with the lawyer's professional activities."
- Codified as Minnesota Rules of Professional Conduct, Rule 8.4, Comment ¶ 6
- See <http://www.mncourts.gov/lprb/05mrpc.html#r84>

### **Missouri**

- Adopted a rule providing that it is professional misconduct for an attorney to "manifest by words or conduct, in representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or other similar factors, are issues."
- Codified as Missouri Rules of Professional Conduct, Rule 4-8.4(g)



- 1 • Additionally adopted a comment to Rule 4-8.4(g)  
2 providing that "Rule 4-8.4(g) identifies the  
3 special importance of a lawyer's words or  
4 conduct, in representing a client, that manifest  
5 bias or prejudice against others based upon race,  
6 sex, religion, national origin, disability, age,  
7 or sexual orientation. Rule 4-8.4(g) excludes  
8 those instances in which a lawyer engages in  
9 legitimate advocacy with respect to these  
10 factors. A lawyer acts as an officer of the  
11 court and is licensed to practice by the state.  
12 The manifestation of bias or prejudice by a  
13 lawyer, in representing a client, fosters  
14 discrimination in the provision of services in  
15 the state judicial system, creates a substantial  
16 likelihood of material prejudice by impairing the  
17 integrity and fairness of the judicial system,  
18 and undermines public confidence in the fair and  
19 impartial administration of justice."
- 20 • Codified as Missouri Rules of Professional  
21 Conduct, Rule 4-8.4, Comment ¶ 3
- 22 • See  
23 <http://www.courts.mo.gov/courts/ClerkHandbooksP2R>  
24 [ulesOnly.nsf/](http://www.courts.mo.gov/courts/ClerkHandbooksP2R)  
25 [c0c6ffa99df4993f86256ba50057dcb8/a51eedab3cdc362b](http://www.courts.mo.gov/courts/ClerkHandbooksP2R)  
26 [86256ca6005211ec?OpenDocument](http://www.courts.mo.gov/courts/ClerkHandbooksP2R)

#### 14 **New Jersey**

- 15 • Adopted a rule providing that it is professional  
16 misconduct for an attorney to "engage, in a  
17 professional capacity, in conduct involving  
18 discrimination (except employment discrimination  
19 unless resulting in a final agency or judicial  
20 determination) because of race, color, religion,  
21 age, sex, sexual orientation, national origin,  
22 language, marital status, socioeconomic status,  
23 or handicap where the conduct is intended or  
24 likely to cause harm."
- 25 • Codified as New Jersey Rules of Professional  
26 Conduct, Rule 8.4(g)
- See  
<http://www.judiciary.state.nj.us/rpc97.htm#8.4>

#### 22 **New York**

- 23 • Adopted a rule providing that it is misconduct to  
24 "unlawfully discriminate in the practice of law,  
25 including in hiring, promoting or otherwise  
26 determining conditions of employment on the basis  
of age, race, creed, color, national origin, sex,  
disability, marital status or sexual  
orientation."

- Codified as New York Rules of Professional Conduct, Rule 8.4(g) (to take effect on April 1, 2009)
- See <http://www.nycourts.gov/rules/jointappellate/NY%20Rules%20of%20Prof%20Conduct.pdf>

#### **North Dakota**

- Adopted a rule providing that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice, including to knowingly manifest through words or conduct in the course of representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation, against parties, witnesses, counsel, or others, except when those words or conduct are legitimate advocacy because race, sex, religion, national origin, disability, age, or sexual orientation is an issue in the proceeding."
- Codified as North Dakota Rules of Professional Conduct, Rule 8.4(f)
- See <http://www.court.state.nd.us/rules/conduct/frameset.htm>

#### **Ohio**

- Adopted a rule providing that it is professional misconduct for a lawyer to "engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability."
- Codified as Ohio Rules of Professional Conduct, Rule 8.4(g)
- See [http://www.sconet.state.oh.us/AttySvcs/ProfConduct/rules/default.asp#Rule8\\_4](http://www.sconet.state.oh.us/AttySvcs/ProfConduct/rules/default.asp#Rule8_4)

#### **South Carolina**

- Adopted Model Rule 8.4, Comment ¶ 3 providing that a "lawyer who, in the course of representing a client, knowingly manifests, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph [(e)] when such actions are prejudicial to the administration of justice."
- Codified as South Carolina Rules of Professional Conduct, Rule 8.4(e), Comment ¶ 3

- See  
[http://www.sccourts.org/courtReg/displayRule.cfm?  
ruleID=407.0&subRuleID=RULE%208.4&ruleType=APP](http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=407.0&subRuleID=RULE%208.4&ruleType=APP)

### **South Dakota**

- Adopted Model Rule 8.4, Comment ¶ 3 providing that a "lawyer who, in the course of representing a client, knowingly manifests, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice."
- Codified as South Dakota Rules of Professional Conduct, Rule 8.4, Comment ¶ 3
- See <http://www.sdbar.org/Rules/rules.shtm>

### **Tennessee**

- Adopted a version of Model Rule 8.4, Comment ¶ 3 providing that a "lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socio-economic status, may violate paragraph (d) if such actions are prejudicial to the administration of justice."
- Codified as Tennessee Rules of Professional Conduct, Rule 8.4(d), Comment ¶ 2
- See [http://www.tba.org/ethics/rules\\_book/index.php?page=rule8.4](http://www.tba.org/ethics/rules_book/index.php?page=rule8.4)

### **Utah**

- Adopted Model Rule 8.4, Comment ¶ 3 providing that a "lawyer who, in the course of representing a client, knowingly manifests by words or conduct bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice."
- Codified as Utah Rules of Professional Conduct, Rule 8.4(d), Comment ¶ 3
- See [http://www.utcourts.gov/resources/rules/ucja/ch13/8\\_4.htm](http://www.utcourts.gov/resources/rules/ucja/ch13/8_4.htm)

### **Vermont**

- Adopted a rule providing that it is professional misconduct for a lawyer to "discriminate against any individual because of his or her race, color,

1 religion, ancestry, national origin, sex, sexual  
2 orientation, place of birth or age, or against a  
qualified handicapped individual, in hiring,  
promoting or otherwise determining the conditions  
of employment of that individual."

- 3 • Codified as Vermont Rules of Professional  
Conduct, Rule 8.4(g)
- 4 • See <http://www.vermontjudiciary.org/PRB1.htm>

#### 5 **Washington**

- 6 • Adopted a rule providing that it is professional  
7 misconduct for a lawyer to, "in representing a  
8 client, engage in conduct that is prejudicial to  
9 the administration of justice toward judges,  
10 other parties and/or their counsel, witnesses  
11 and/or their counsel, jurors, or court personnel  
12 or officers, that a reasonable person would  
13 interpret as manifesting prejudice or bias on the  
14 basis of sex, race, age, creed, religion, color,  
national origin, disability, sexual orientation,  
or marital status. This Rule does not restrict a  
lawyer from representing a client by advancing  
material factual or legal issues or arguments."
- Codified as Washington Rules of Professional  
Conduct, Rule 8.4(h)
- See  
[http://www.courts.wa.gov/court\\_rules/?fa=court\\_ru  
les.rulesPDF&group Name=ga&setName=RPC](http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&group Name=ga&setName=RPC)